

PROPOSED REGULATIONS GOVERNING POLYGRAPH EXAMINERS
Adpoted March 3, 2005

PART I.
DEFINITIONS

18 VAC 120-30-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

~~“**Affidavit**” means a written statement of facts, made voluntarily, and confirmed by the oath of affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.~~

~~“**Advisory board**” or “**board**” means the Polygraph Examiner’s Advisory Board.~~

~~“**Department**” means the Department of Professional and Occupational Regulation.~~

~~“**Director**” means the Director of the Department of Professional and Occupational Regulation.~~

~~“**Polygraph**” means any mechanical or electronic instrument or device used to test or question individuals for the purpose of determining truthfulness.~~

~~“**Polygraph examination**” means the entire period of contact between a licensee and an examiner.~~

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~~“**Polygraph examiner**” or “**examiner**” means any person who uses any device or instrument to test or question individuals for the purpose of determining truthfulness.~~

~~“**Polygraph examiner intern**” means any person engaged in the study of polygraphy and the administration of polygraph examinations under the personal supervision and control of a polygraph examiner.~~

“**Polygraph test**” means the part of the polygraph examination during which the examinee is connected to a polygraph instrument which is continuously recording the examinee’s reactions to questions.

“**Reciprocity**” means any individual holding a current license in another jurisdiction may obtain a Virginia polygraph examiners license provided the requirements and standards under which the license was issued are substantially equivalent to those established in this chapter and the individual meets all other board requirements for licensure in Virginia.

“**Reinstatement**” means having a license restored to effectiveness after the expiration date on the license has passed. When a licensee fails to renew his license within one calendar month after its expiration date, the licensee is required to apply for reinstatement of the license. Six months after the expiration date on the license, reinstatement is no longer possible and the applicant must reapply and requalify for licensure.

“**Relevant question**” means a question asked of an examinee during a polygraph test which concerns an issue identified to the examinee during the pretest and which is to be reported by

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the licensee to another person.

“**Renewal**” means continuing the effectiveness of a license for another period of time.

18 VAC 120-30-30. Advisory board.

A. The Polygraph Examiners Advisory Board, consisting of eight members appointed by the director, shall exercise the authority delegated by the director consistent with § 2.2-2100(A) of the Code of Virginia and advise the department on any matters relating to the practice of polygraphy and the licensure of polygraph examiners in the Commonwealth of Virginia.

B. The advisory board shall be composed of three Virginia licensed polygraph examiners employed by law enforcement agencies of the Commonwealth, or any of its political subdivisions; three Virginia licensed polygraph examiners employed in private industry; and two citizen members as defined in §§ 54.1-107 and 54.1-200 of the Code of Virginia. All members must be residents of the Commonwealth of Virginia.

C. Each member shall serve a four-year term. No members shall serve more than two consecutive four-year terms.

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PART II.
ENTRY REQUIREMENTS

18 VAC 120-30-40. Basic qualifications for licensure and registration.

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years old.

2. ~~The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator, detective, or in a field acceptable to the Department which demonstrates the ability to practice polygraphy.~~
 - a. ~~The applicant will be credited two years of the five years of experience required in subdivision 2 of this subsection if he has an associate degree from an accredited college or university.~~

 - b. ~~The applicant will be credited all five years of experience required in subdivision 2 of this subsection if he has a bachelor's degree from an accredited college or university.~~

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~~3. The applicant has met the education requirements by either completing the required training in detection of deception at a polygraph school approved by the Department, or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection or deception is not approved by the Department.~~

~~4. The applicant has completed six months as a registered intern examiner under the personal and direct on premise supervision of an examiner qualified under 18 VAC 120-30-60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license examination until the intern's supervisor has submitted to the Department a written statement that the internship has been satisfactorily completed. The Department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.~~

~~5-2. The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed. The applicant must disclose if he has had a license as a polygraph examiner which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner and whether he has been previously licensed in Virginia as a polygraph examiner.~~

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~~6-~~ 3. The applicant is fit and suited to engage in the profession of polygraphy. The applicant must disclose if he has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

~~7~~ 4. The applicant has disclosed his physical address. A post office box is not acceptable.

~~8~~ 5. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.

~~9~~ 6. The applicant has signed, as part of the application, ~~an affidavit~~ a statement certifying ~~the~~ that he has read and understands the Virginia polygraph examiner's license law and ~~the regulations of the board.~~

~~10~~ 7. The applicant has submitted ~~two fingerprint cards with his application on forms provided by the department for a criminal background history.~~ an application, provided by the department, which shall include a criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.

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B. The department may (i) make further inquiries and investigations with respect to the qualifications of the applicant, (ii) require a personal interview with the applicant, (iii) or both. ~~Failure of an applicant to comply with a written request from the advisory board or director for additional information within 30 days of receiving such notice, except in such instances where the advisory board or director has determined ineligibility for a clearly specified period of time, may be sufficient and just cause for disapproving the application.~~

C. The applicant shall pass all parts of the polygraph examiners licensing examination approved by the department at a single administration in order to be eligible for a polygraph examiners license.

18 VAC 120-30-50. Registration of polygraph examiner interns.

A. A polygraph examiner intern registration shall be issued to applicants who fulfill the requirements of subdivisions A 2 and A 3 of 18 VAC 120-30-40: and the following:

1. The applicant has met the experience requirements by having a high school diploma or its equivalent and a minimum of five years experience as an investigator or detective, or in a field acceptable to the department which demonstrates the ability to practice polygraphy.

a. The applicant will be credited two years of the five years of experience required in subdivision 1 of this subsection if he has an associate degree from an accredited college or university.

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- b. The applicant will be credited all five years of experience required in subdivision 1 of this subsection if he has a bachelor's degree from an accredited college or university.
2. The applicant has met the education requirements by either completing the required training in detection of deception at a polygraph school approved by the department , or by submitting evidence of satisfactory completion of substantially equivalent training if the polygraph school at which the applicant received the training in the detection of deception is not approved by the department.
- B. An intern registration shall be valid for 12 months from the date of issue as indicated on the registration.
- C. Each intern shall be supervised by a licensed polygraph examiner who meets the qualifications in 18 VAC 120-30-60.
- D. A polygraph intern may apply for an extension of a polygraph intern registration after the expiration of the initial intern registration for no more than one year by submitting the fee referenced in 18 VAC 120-30-100. Additional extensions will be allowed if the individual repeats the education requirements set forth in subdivision A ~~3~~ 2 of 18 VAC 120-30-4050.

18 VAC 120-30-55. Qualifications for licensure by examination.

A polygraph examiner license shall be issued to applicants who fulfill the requirements of 18

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VAC 120-30-40, 18 VAC 120-30-50, and the following:

A. The applicant has completed six months as a registered intern examiner under the personal and direct on-premise supervision of an examiner qualified under 18 VAC 120-30-60 who shall supervise each and every polygraph examination administered by the intern. The internship need not be accomplished in Virginia. However, any internship conducted outside of Virginia must comply fully with this regulation. An intern shall not be eligible to sit for the license examination until the intern's supervisor has submitted to the department a written statement that the internship has been satisfactorily completed. The department may waive the internship for any person who practiced polygraphy in the federal jurisdiction.

B. Upon submission of the completed application and fee, the applicant will be considered for the examination required by 18 VAC 120-30-110 of this chapter. Upon passing such examination, the applicant shall be granted his polygraph examiners license, provided the applicant is otherwise qualified.

18 VAC 120-30-90. Waiver of internship requirement.

Any federal employee or military personnel who have administered polygraph examinations as one of their duties in their respective jobs, and who have received training from the federal government or United States military, may obtain a Virginia polygraph examiner's license without fulfilling the internship requirement by successfully passing the ~~board's~~ department's written examination.

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18 VAC 120-30-100. Fees.

A. All application fees for licenses and registrations are nonrefundable and shall not be prorated. The date of receipt by the department is the date which will be used to determine whether or not the fee is on time.

B. Application and examination fees must be submitted with the application for licensure. All other fees are discussed in greater detail in later sections of this chapter.

C. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus ~~the additional processing charge shown below~~ an additional processing charge set by the Department.

D. The following fees listed in the table apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Application for Examiner's License	\$45	With application
<u>Application for Examiner's License by Reciprocity</u>	<u>\$45</u>	<u>With application</u>
Application for Intern Registration	\$20	With application
Dishonored Check	\$25	Upon notification by financial institution.
Examination	\$75	With application

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Reexamination	\$75	With approval letter
Renewal	\$15	Up to one calendar month after the expiration date on license
Reinstatement	\$50	One to six calendar months after the expiration date on license.
Duplicate Wall Certificate	\$25	With written request

PART III

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RENEWAL.

18 VAC 120-30-130. Procedures for renewal.

The department will mail a renewal application form to the license at the last known ~~home~~ address of department record. Failure to receive this notice shall not relieve the license of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the department all required forms and the appropriate fee as reference in 18 VAC 120-30-100.

18 VAC 50-30-150. Department discretion to deny renewal.

The department may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ ~~9-6.14:1~~ 2.2-4000 et seq. of the Code of Virginia.)

Failure to timely pay a monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.

18 VAC 120-30-160. Qualifications for renewal.

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Applicants for renewal of a license shall continue to meet the standards for entry as set forth in subdivisions A ~~5~~ 2 through A ~~8~~ 5 of 18 VAC 120-30-40.

PART IV

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REINSTATEMENT.

18 VAC 120-30-180. Department discretion to deny reinstatement.

The department may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee.

~~The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq. of the Code of Virginia).~~

Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding the services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or examination administration.

18 VAC 120-30-190. Status of a license during the period before reinstatement.

A. When a license is reinstated, the license shall continue to have the same license number and shall be assigned an expiration date one year from the previous expiration date of the license.

B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary

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authority of the department during the entire period. Nothing in this chapter shall divest the department of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

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PART V.

STANDARDS OF PRACTICE AND CONDUCT.

18 VAC 120-30-200. Polygraph examination procedures.

A. Each licensed polygraph examiner and registered polygraph examiner intern must post, in a conspicuous place for the examinee, his license or registration, or a legible copy of his license or registration to practice in Virginia.

B. The examiner shall provide the examinee with a written explanation of the provisions of 18 VAC 120-30-200, 18 VAC 120-30-210, and 18 VAC 120-30-220 at the beginning of each polygraph examination.

C. The examinee may request a tape recording of the polygraph examination being administered. Each examiner shall maintain a tape recording equipment and tapes adequate for such recording. The examiner shall safeguard all examination recordings with the records he is required to keep ~~by~~ pursuant to 18 VAC 120-30-230. All recordings shall be made available to the department, the examinee or the examinee's attorney upon request. The examiner may charge the examinee a fee not to exceed \$25 only if the examinee requests and receives a copy of an examination tape recording.

D. The examinee shall be entitled to a copy of all portions of any written report pertaining to his examination which is prepared by the examiner and provided to any person or organization. The examinee shall make his request in writing to the examiner. The examiner shall comply

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within 10 business days of providing the written report to any person or organization or receiving the examinee's written request, whichever occurs later. The examiner may collect not more than \$1.00 per page from the examinee for any copy provided.

E. The provisions of subsections B, C, and D of this section shall not be applicable to any examination conducted by or on behalf of the Commonwealth or any of its political subdivisions when the examination is for the purpose of preventing or detecting crime or the enforcement of penal laws. However, examiners administering examinations as described in this section shall comply with subsection B of this section through a verbal explanation of the provisions of 18 VAC 120-30-210 and 18 VAC 120-30-220.

18 VAC 120-30-220. Examination standards of practice.

A. ~~To protect the rights of each examinee, the~~ The examiner shall comply with the following standards of practice ~~by advising and shall disclose to each examinee in the manner prescribed of each of the following standards of practice~~ the provisions of this subsection and shall not proceed to examine or continue the examination if it is or becomes apparent to the examiner that the examinee does not understand any ~~one~~ of these ~~standards~~ disclosures:

1. All questions to be asked during the polygraph test(s) shall be reduced to writing and read to the examinee.
2. The examinee or the examiner may terminate the examination at any time.

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3. If the examination is within the scope of § 40.1-51.4:3 of the Code of Virginia, the examiner shall explain the provisions of that statute to the examinee.
4. No questions shall be asked concerning any examinee's lawful religious affiliations, lawful political affiliations, or lawful labor activities. This provision shall not apply to any such affiliation which is inconsistent with the oath of office for public law-enforcement officials.
5. The examinee shall be provided the full name of the examiner and the name, address, and telephone number of the department.

~~B.~~ 6. The examiner shall not ask questions during any part of a pre-employment polygraph examination concerning an examinee's sexual preferences or sexual activities in accordance with § 40.1-51.4:3 or § 54.1-1806 of the Code of Virginia.

~~C.~~ B. An examiner shall not perform more than 12 ploygraph examinations in any 24-hour period.

~~D.~~ C. An examiner shall not ask more than 16 questions per chart on a single polygraph test. Nothing in this subsection shall prohibit an examiner from conducting more than one polygraph test during a polygraph examination.

~~E.~~ D. An examiner shall allow on every polygraph test a minimum time interval of 10 seconds between the examinee's answer to a question and the start of the next question.

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F E. An examiner shall record at a minimum the following information on each polygraph test chart produced:

1. The name of the examinee;
2. The date of the examination;
3. The time that each test begins;
4. The examiner's initials;
5. Any adjustment made to component sensitivity;
6. The point at which each question begins and each answer is given;
7. Each question number; and
8. Each answer given by the examinee.

G E. An examiner shall render only three evaluations of polygraph tests:

1. Deception indicated;
2. No deception indicated; or
3. Inconclusive.

An examiner may include in his report any information revealed by the examinee during the polygraph examination.

Nothing in this section shall prohibit an examiner from explaining the meaning of the above evaluations.

H G. An examiner shall not render a verbal or written report based upon polygraph test chart analysis without having conducted at least two polygraph tests. Each relevant question shall

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have been asked at least once on each of at least two polygraph tests.

† H. An examiner may make a hiring or retention recommendation for the examiner's full-time employer provided the hiring or retention decision is not based solely on the results of the polygraph examination.

18 VAC 120-20-230. Records.

The licensed polygraph examiner or registered polygraph examiner intern shall maintain the following for at least one year from the date of each polygraph examination:

1. Polygraphic charts;
2. Questions asked during the examination;
3. A copy of the results and the conclusion drawn;
4. A copy of any written report provided in connection with the examination; and
5. Tape recordings of examinations made in compliance with subsection C of 18 VAC 120-30-200.

18 VAC 120-30-240. Grounds for fines, denial, suspension or revocation of licenses or denial or withdrawal of school approval.

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or

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registration, renewal or license or registration, or approval;

2. Has violated, aided, or abetted others to violate Chapters 1 through 3 of Title 54.1 or §§ 54.1-1800 through ~~54.1-1805~~ 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;
3. Has been convicted of any misdemeanor directly related to the occupation or any felony. Any pleas of nolo contendere shall be considered a conviction for the purposes of this section. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within 10 days of entry and shall be admissible as prima facie evidence of such conviction;
4. Has made any misrepresentation or false promise or caused to be published any advertisement that is false, deceptive, or misleading;
5. Has allowed one's license or registration to be used by anyone else;
6. Has failed, within a reasonable period of time, to provide any records or other information requested or demanded by the department; ~~or~~
7. Has displayed professional incompetence or negligence in the performance of polygraphy; or

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8. Has violated any provision of 18 VAC 120-30-220.

18 VAC 120-30-250. Maintenance of license.

A. Notice in writing shall be given to the department in the event of any change of ~~business~~ or ~~individual~~ name or address. Such notice shall be mailed to the department within 30 days of the change of the name or location. The department shall not be responsible for the licensee's or registrant's failure to receive notices, communications and correspondence caused by the licensee's or registrant's failure to promptly notify the department in writing of any change of name or address.

B. All licensees or registrants shall operate under the name in which the license or registration was issued.

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APPROVAL OF POLYGRAPHY SCHOOLS.

18 VAC 120-30-270. Minimum requirements for school curriculum.

- A. There must be one type of accepted polygraph instrument per three students in the course.
- B. To receive approval, the institution must offer a minimum of 240 hours of instruction, unless the school has obtained approval from the department for less than the minimum hours of course instruction. The following subject areas must be included in the school's curriculum; ~~must include:~~

1. Polygraph theory;
2. Examination techniques and question formulation;
3. Polygraph interrogation;
4. Case observation;
5. Polygraph case practice;
6. Chart interpretation;

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7. Legal aspects of polygraph examination;
 8. Physiological aspects of polygraphy;
 9. Psychological aspects of polygraphy;
 10. Instrumentation;
 11. History of polygraph; and
 12. Reviews and examinations.
- C. Out-of-state schools seeking approval of their curriculum which has been approved by their state must have the appropriate regulatory agency of their state certify such approval to the department.

18 VAC 120-30-280. Instructor minimum requirements.

- A. Any person teaching the subjects required by this regulation shall meet the following minimum requirements for the subjects to be taught:
1. Legal Aspects of Polygraph Examination. The instructor must be ~~a member of the Virginia State Bar~~ licensed as an attorney in a state or jurisdiction of the United States.

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2. Polygraph Interrogation. The instructor must have five years experience in the field of interrogation.
3. Physiological Aspects of Polygraphy. The instructor must have a degree in a health related science with coursework in physiology from an accredited institution of higher learning.
4. Psychological Aspects of Polygraphy. The instructor must have a degree in psychology from an accredited institution of higher learning.
5. All other courses ~~may~~ shall be taught by individuals having at least five years of experience as a polygraph examiner.

B. The department may make exception to the above qualifications when an instructor is otherwise qualified by education or experience and provides such evidence in writing to the department.

~~C. Schools may be required to submit evidence of compliance with this section on a quarterly basis and shall allow observations of their compliance by the department's designated representatives.~~

18 VAC 120-30-290. Amendments and changes.

Any change in the information provided by the school to the department as required by 18 VAC

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120-30-260, 18 VAC 120-30-270 or 18 VAC 120-30-280 shall be reported to the department in writing within 30 days of such an occurrence.

18 VAC 120-30-300. Periodic requalification for continued course approval.

At times established by the department, the department may require that schools which have previously obtained course approval, provide the department with evidence, in a form set forth by the department, that they continue to comply with the requirements of 18 VAC 120-30-260, 18 VAC 120-30-270 and 18 VAC 120-30-280. Failure to continue to comply with the department's requirements or respond to such a request may result in the department withdrawing its approval.

18 VAC 120-30-310. Grounds for withdrawing approval from a school.

The department may withdraw approval from a school upon a finding that:

- A. An instructor of the approved school fails to teach the curriculum as provided for in 18 VAC 120-30-270.

- B. The owner, employee, or instructor of the approved school permits or allows a person to teach in the school who does not meet the requirements of 18 VAC 120-30-280.

- C. The owner, employee, or teacher is guilty of any dishonest conduct, including but not limited to fraud or deceit, in the teaching of polygraphy or violates any of the provisions of 18 VAC 120-30-240.

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